

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

In re:	§	Chapter 11
	§	
EPTMS, INC.	§	Case No. 17-31729 (HCM)
	§	
DEBTOR	§	

**RESPONSE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS TO
MOTION TO DISMISS OR CONVERT**

The Texas Comptroller of Public Accounts ("Comptroller"), through the Texas Attorney General's Office, responds to the United States Trustee's Motion to dismiss or convert this case (the "Motion").

1. The United States Trustee's Motion was prompted by a notice of default letter sent by the Comptroller to the Debtor for violations of the cash collateral order entered in this case. A copy of the letter is attached as Exhibit 1.

2. The Debtor has failed to pay post-petition sales taxes, in addition to not making payments under the cash collateral order or creating a segregated sales tax account. In particular, the Debtor has not paid sales tax for December 2017 in the amount of over \$20,000, including tax, penalty and interest and has failed to timely file or pay its sales tax return for January 2018. A copy of the Comptroller's mainframe computer screen showing the status of the account as of this date is attached as Exhibit 2.

3. The case should be converted. Unless converted, the Debtor will continue to convert sales tax trust funds. This continuing "bleeding" of state funds should be stopped immediately by the appointment of a trustee.

4. The Comptroller believes a trustee should review this case for Chapter 5, and perhaps other, causes of action. The Court will recall the testimony from the final cash

collateral hearing of the extensive intermingling of personal and business finances between the owner and the Debtor.

5. The undersigned Assistant Attorney General has spoken Kevin Epstein of the United States Trustee's office and he has no objection to conversion of the case rather than dismissal.

WHEREFORE, the Comptroller respectfully requests that this case be converted to Chapter 7.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division

/s/ Jay W. Hurst
JAY W. HURST
Texas State Bar No. 10315620
Assistant Attorney General
Bankruptcy & Collections Division MC 008
P. O. Box 12548
Austin, TX 78711-2548
Telephone: (512) 475-4861
Facsimile: (512) 936-1409
jay.hurst@oag.texas.gov

ATTORNEYS FOR THE TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS

CERTIFICATE OF SERVICE

I certify that on March 6, 2018, a true copy of the foregoing was served by the method and to the following parties as indicated:

By First Class Mail:

EPTMS, Inc.
9813 Dyer, Suite 300
El Paso, TX 79924

By Electronic Means as listed on the Court's ECF Noticing System:

- Merwan N Bhatti
Mounce, Green, Myers, Safi, Paxson
P.O. Drawer 1977
El Paso, TX 79999 1977
bhatti@mgmsg.com
- James W. Brewer
221 N. Kansas, Ste. 1700
El Paso, TX 79901
jbrewer@kempsmith.com,
tschoemer@kempsmith.com
- Harrel L. Davis
P.O. Box 1322
El Paso, TX 79947 1322
hdavis@eplawyers.com,
vrust@eplawyers.com;
vpena@eplawyers.com
- Herbert Ehrlich
Ehrlich Law Firm
444 Executive Center Blvd Ste. 240
El Paso, TX 79902
herbert@ehrlichlawfirm.com
- Alicia L. Gutierrez
Moses, Dunn, Farmer & Tuthill, P.C.
PO Box 27047
Albuquerque, NM 87125 7047
alicia@moseslaw.com,
ronda@moseslaw.com

- Corey W. Haugland
James & Haugland, P.C.
P.O. Box 1770
El Paso, TX 79949 1770
chaugland@jghpc.com
- E. P. Bud Kirk
600 Sunland Park Drive, Ste. 4-400
El Paso, TX 79912 5134
budkirk@aol.com
- Shay Elizabeth Meagle
Moses, Dunn, Farmer & Tuthill, P.C.
PO Box 27047
Albuquerque, New Mexico 87125 7047
shay@moseslaw.com,
roberta@moseslaw.com
- Christopher R Murray
Diamond McCarthy LLP
909 Fannin, Suite 3700
Houston, TX 77010
cmurray@diamondmccarthy.com,
cburrow@diamondmccarthy.com
- Shad Robinson
Haley & Olson, P.C.
100 N. Ritchie Rd., Ste. 200
Waco, TX 76712 8544
srobinson@haleyolson.com,
bperry@haleyolson.com
- Donald P. Stecker
711 Navarro Suite 300
San Antonio, TX 78205
don.stecker@lgbs.com
- United States Trustee - EP12
615 E. Houston, Suite 533
San Antonio, TX 78295 1539
USTPRegion07.SN.ECF@usdoj.gov

- Jameson Joseph Watts
Husch Blackwell, LLP
111 Congress Avenue, Suite 1400
Austin, TX 78701
jameson.watts@huschblackwell.com,
Christine.deacon@huschblackwell.com;
penny.keller@huschblackwell.com

/s/ Jay W. Hurst
JAY W. HURST